IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 618 OF 2004

Shri Kanabhai Sakubhai Rabari,
Age: 50 years, Occ.: Driver,
R/o. Chandubhai Mistry's House,
Near Varsamedi, Octroi Post,
Tal: Anjar, Kachch, Gujarat. .... Appellant.
(Org.Claimants)

Versus.

1. Shri Raghu M. Pujari,
   Age: Adult, Occ.: Transport,
   Operator, R/o. Ravi Vihar,
   2nd floor, Peru Baug, R/No.25,
   Aarey Road, Goregaon (East),
   Mumbai 400 063.

2. The New India Assurance Co.Ltd.,
   Registered and Head Office,
   New India Bhavan, 34/38, Bank
   Street, Fort, Mumbai 400 023.

3. Shri Jayesh Keshavlal Shah,
   Age: Adult, Occ.: Transport,
   Operator, R/o. Village Ningal,
   At present residing at Ganga
   Naka, Anjar, Kachch, Gujarat.

4. The Oriental Insurance Co.Ltd.
   Kachh Office, Hospital Road,
   Bhuj, Kachch, Gujarat. .... Respondents.
   (Org.Opponents
   Nos.1 to4.)

Shri K.K.Tated for the Appellant.

Ms.Arati B.Bane for Respondent No.2.

CORAM : ABHAY S. OKA, J.

Date on which the Judgment
is reserved : : 2nd August, 2004.

Date on which the Judgment

is pronounced : : 9th August, 2004.

JUDGMENT.

1. On 14th June 2004 a notice for final disposal at admission stage was issued to the Respondents. The office endorsement shows that the Respondent No.1 is not duly served with the notice and the Respondent No.2 Insurance Company is served and represented by an Advocate. The learned Advocate appearing for the Appellant states that no relief is sought against any other Respondents. Accordingly on 2nd August 2004 the Appeal was heard finally.

2. The Appellant is the Claimant in Application under section 166 of the Motor Vehicle Act, 1988. The case of the Appellant is that he is a Driver by profession. On 15th February 1989 he was travelling in a Truck bearing Registration No.GRY-6900 as a Second Driver, when the truck was on its regular trip from Surat to Jaisingpur. When the truck reached within the limit of village Sakvar, Bharolpada on Ahmedabad Highway, the offending truck bearing No.MRL-3794 came from opposite side and gave a dash to truck No.GRY-6900 in which the Appellant was travelling. The Appellant suffered injuries and the driver of the said truck died on the spot. The Appellant pleaded his entitlement to a sum of

Rs.41,500/- in the claim petition and restricted the prayer only to the extent of Rs.25,000/-. The

Respondent No.1 is the owner of the offending vehicle and Respondent No.1 is the insurer of the offending truck. The Respondent No.1 did not contest the application and the Respondent No.2 contested the application by making out a case that the accident took place due to the contributory negligence of the drivers of both the trucks.

3. The learned Member of the Tribunal held that the driver of the truck owned by the Respondent No.1 was negligent and therefore directed the Respondents Nos.1 and 2 to jointly and severally pay a sum of Rs.7000/- together with interest thereon at the rate of 8% per annum from 1st July 2003. Being aggrieved by the said Judgment and Award, the Appellant has preferred this Appeal. The Respondent No.2 has not preferred any Appeal or cross-objection.

4. Shri Tated, the learned Advocate appearing for the Appellant submitted that the Appellant sustained injuries to both his legs. The case of the Appellant was that he suffered lot of pain and was prevented from attending his duty. He submitted that the claim of the

Appellant for medical treatment was Rs.10,000/-. The learned Advocate submitted that the Appellant was not expected to retain each and every bill or voucher of the

amount spent on medical treatment. He submitted that it is a matter of common knowledge that it is not possible to procure a bill or voucher for every rupee spent on Medical Treatment. It is the case of the Appellant that as he was a resident of Anjar in Gujarat and due to earth quake he lost documents in his possession. The learned Advocate for the Appellant submitted that if the Appellant suffered injuries to his legs, the Tribunal Committed an error in awarding only a sum of Rs.1000/- for pain and suffering. He submitted that even on account of loss of income, a sum of Rs.3000/- awarded by the Tribunal is on the lower side. The learned Advocate Shri Tated submitted that interest at the minimum rate of 12% per annum ought to have been awarded from the date of filing of the Claim Petition i.e.16th June 1989.

5. The learned Counsel appearing for the Respondent No.2 supported the impugned Judgment and Award by contending that the compensation awarded is fair and reasonable and the interest awarded is also reasonable.

6. I have considered the rival submissions. The Appellant has claimed a sum of Rs.3000/- in the Claim Petition on account of expenses on medical treatment. The said amount has been granted by the Tribunal. On

account of actual loss of income, the compensation of Rs.3000/- is awarded. No fault can be found with the Tribunal in so far as the compensation awarded under the said two heads is concerned. The Tribunal has awarded only a sum of Rs.1000/- on account of pain and suffering. In the examination in chief the Appellant has stated that the injuries on his both the legs were required to be stitched. He stated that scars are left of the said injuries and are visible today also. In so far as his evidence of the Appellant regarding the nature of injuries is concerned, I find that there is hardly any cross-examination. Therefore, compensation which was awarded by the Tribunal of Rs.1000/- on account of pain and suffering is inadequate. I am of the view that the total compensation of Rs.7000/- awarded by the trial Court is inadequate. Considering the evidence on record, in my opinion, a total sum of Rs.15,000/- ought to have been awarded by the Tribunal.

7. The Claim Petition was filed on 16th June 1989 and

there is no reason to deny the interest on compensation to the Appellant from the date of filing of the claim petition. No reasons are assigned by the Tribunal for granting interest only from 1st July 2003. In so far as the rate of interest is concerned, the Apex Court in a

Judgment reported in 2003 ACJ page 680 (Arati Bezbaruah v/s. Dy.Director General, Geological Survey of India) after considering its earlier judgments held that the interest at the rate of 9% per annum is reasonable. Hence the Appellant in this case is entitled to interest at the rate of 9% per annum from the date of filing of the Claim Petition.

8. Hence the following order:

(i) The Appeal is partly allowed with no order as to costs in this Appeal.

(ii) The operative part of the Award passed by the Tribunal is substituted by the following:

. "The Claim Petition is partly allowed with proportionate costs. Opponents Nos.1 and 2 do pay jointly and severally a sum of Rs.15,000/- to the Appellant/Claimant together with a simple

interest at the rate of 9% per annum from 16th June 1989 till date of deposit of the amount".

(iii) Time of twelve weeks is granted to the Respondent No.2 to comply with the aforesaid Award. If any amount is already deposited by the Respondent

No.2 on the basis of the Award dated 11th December 2003, the Respondent No.2 will be entitled to adjustment.

(iv) Parties and all concerned to act on ordinary copy of the order duly authenticated by the Court Sherestadar/ Personal Secretary.

Judge.